

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Media Bureau and Consumer and)	MB Docket No. 12-108
Governmental Affairs Bureau Seek)	
Comment on Second VPAAC Report: User)	
Interfaces, and Video Programming Guides)	
and Menus)	

REPLY TO COMMENTS IN REPSONSE TO PUBLIC NOTICE
Submitted by Public Citizen, September 13th, 2012

Public Citizen submits this reply to comments in response to the Federal Communications Commission's (FCC) April 24, 2012 Public Notice in the above-referenced proceedings.¹ Public Citizen is a national non-profit organization with more than 300,000 members and supporters. We represent consumer interests through lobbying, litigation, administrative advocacy, research, and public education on a broad range of issues including consumer rights in the marketplace, product safety, financial regulation, safe and affordable health care, campaign finance reform and government ethics, fair trade, climate change, and corporate and government accountability.

Closed captioning plays a critical role in the lives of deaf and hard of hearing people. Not only does closed captioning make information more accessible to this population, it also provides an avenue for leisure and entertainment, crucial aspects of human beings' lives. Closed captioning allows deaf and hard of hearing people to make use of technologies available to those without disabilities. Without such access, deaf and hard of hearing people are denied the opportunity to fully participate in important aspects of social, political, and economic life in the United States.

The Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) advances the rights of deaf and hard of hearing people in important ways. Moreover, the creation of the Video Programming and Emergency Access Advisory Committee (VPAAC)

¹ *In the Matter of Media Bureau and Consumer and Governmental Affairs Bureau Seek Comment on Second VPAAC Report: User Interfaces, and Video Programming Guides and Menus*, MB Docket. No. 12-108, Public Notice, DA 12-635 (rel. Apr. 24, 2012) ("Public Notice" or "PN").

opened the door for meaningful participation of consumers. In these comments, we emphasize the importance of accessible user interfaces from the perspective of consumers of closed captioning services.

An issue that remained unresolved in the VPAAC report is the definition of “reasonably comparable,” the term used in Sections 204(a)(2) and Section 205(b)(2) of the CVAA. In these sections, the CVAA states that closed captioning capability must be accessible “through a mechanism that is *reasonably comparable* to a button, key, or icon designated for activating the closed captioning or accessibility features.”² The way in which the term “reasonably comparable” is interpreted may have a profound effect on the extent to which closed captioning is genuinely accessible to deaf and hard of hearing people.

Public Citizen agrees with the recommendation of the Consumer Groups³, calling for the term “reasonably comparable” in the CVAA to be taken on a functional basis.⁴ The Consumer Groups suggested that the following text be included in the report of the VPAAC:

When dedicated physical buttons are used to control volume and/or channel selection, the controls for access to closed captions (or video description) must also be dedicated physical buttons, comparable in location to those provided for control of volume or channel selection.⁵

Such an interpretation of the CVAA language is most likely to ensure that consumers do not encounter non-intuitive, confusing user interfaces that present obstacles to close captioning, as many of them do at present. It is both the most straightforward interpretation of the statutory language, and the necessary approach to achieve the CVAA's purpose of "increase[ing] the access of persons with disabilities to modern communications."

In contrast, industry groups, including the Consumer Electronics Association (CEA) and the National Cable and Telecommunications Association (NCTA), emphasize that the CVAA

² Pub. L. No. 111-260, 124 Stat. 2751 (2010), §§ 204(a), 205(a). (Emphasis added.)

³ The Consumer Groups referenced in these comments include the National Association of the Deaf; Telecommunications for the Deaf and Hard of Hearing, Inc.; Deaf and Hard of Hearing Consumer Advocacy Network; Association of Late-Deafened Adults, Inc.; California Coalition of Agencies Servicing the Deaf and Hard of Hearing; and Technology Access Program at Gallaudet University.

⁴ *Reply to Comments in Response to Public Notice submitted by “Consumer Groups”*. MB Docket No 12-108. (“Consumer Groups’ Reply”)

⁵ Video Programming Accessibility Advisory Committee. (2012 April). *Second Report of Video Programming Accessibility Advisory Committee on the Twenty-First Century Communications and Video Accessibility Act of 2010: User Interfaces and Video Programming Guides and Menus*. Retrieved 11 September, 2011, from: <http://vpaac.wikispaces.com/file/view/120409+VPAAC+User+Interfaces+and+Video+Programming+Guides+and+Menus+REPORT+AS+SUBMITTED+4-9-2012.pdf>. See Appendix A, “Open Issues.”

requires that operators have “maximum flexibility” to comply with the user interface provisions of the Act. Yet, without further specification of what such flexibility may look like, there is great concern that it will perpetuate existing practices that have made closed captioning difficult for consumers to access. The NCTA and CEA have proposed the following alternative to the text above:

When dedicated physical buttons are used to control volume and/or channel selection, the controls for access to closed captions (or video description) must also be reasonably comparable to physical buttons, comparable in accessibility to those provided for control of volume or channel selection.⁶

But such language would not adequately specify the need for easily accessible controls. Moreover, no clear examples have been provided to explain what comparable accessibility would look like in situations where the closed captioning controls are not of the same variety as volume or other essential controls. While the NCTA states in its comments that the provision of “dedicated physical buttons on remote controls to access closed captioning” is not required by the CVAA and constitutes only one way of complying with the CVAA, it does not specify any alternatives that it deems acceptable and compliant with the law. Nor does it provide any practical rationale for why a button standard unreasonably burdens operators.

Without clear guidance, it is likely that the meaning of “reasonably comparable” will be stretched until no longer meaningful. It is clear that the Congress used the language at issue because it believes that easily accessible controls, like buttons, are needed to ensure that consumers can access closed captioning. The Congress rightly aimed to maintain some flexibility for industry so that the guidelines in the CVAA do not become obsolete as technology inevitably changes over time. Nonetheless, while allowing for such flexibility, the intent of the language is clear: provide users with something that resembles other commonly used controls, such as volume controls, as closely possible. Any other interpretation of this language does not reflect the plain statutory language or Congressional intent.

At present, some consumers must go through several steps to activate or deactivate closed captioning; many may have to turn off their televisions or cable boxes in order to activate closed captioning; and some may encounter multiple menu levels before accessing the menu that allows them to activate or deactivate closed captioning. Such requirements are clearly a barrier to

⁶ Ibid.

access. A Public Citizen member recently filed a complaint with the FCC that reflects these difficulties.⁷ Our member had great difficulty setting up his closed captioning service. In a letter from Comcast responding to his complaint, the consumer was told that he must activate his closed captioning “by turning off the box and then selecting menu using the closed captioning options.” Requiring the consumer to turn off the cable box and then navigate a separate menu system is clearly unnecessarily complicated, particularly for elderly consumers or consumers who are not particularly technologically adept, as will be the case for many consumers of closed captioning services. The CVAA should not be interpreted in a way that allows these sorts of obstacles persist.

Public Citizen agrees with the suggestions of the Consumer Groups regarding the inclusion of examples of what constitutes reasonably comparable access to closed captioning and what does not.⁸ Providing a full range of such examples will be useful to both industry and consumers. Industry will be able to ensure that it is meeting the standards of the CVAA. Clearer guidance will eliminate guesswork and the potential for future complaints. Consumers will know which circumstances merit filing a complaint, allowing them to exercise their rights appropriately.

We strongly urge the FCC to take seriously the concerns raised by the Consumer Groups and ensure that it provides proper guidance to industry on the interpretation of “reasonably comparable” access. Consumers of closed captioning deserve to be able to access this vital service without encountering unnecessary obstacles.

⁷ See FCC User Complaint Number 11-C00292398-1, Comcast (Henninger). Filed March 23, 2011.

⁸ See Consumer Groups’ Reply.